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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEROME A. COHEN

Appeal 2009-1489
Application 10/643,496
Technology Center 3600

Decided:¹ March 26, 2009

Before: JENNIFER D. BAHR, STEVEN D.A. McCARTHY, and
MICHAEL W. O'NEILL, *Administrative Patent Judges.*

BAHR, *Administrative Patent Judge.*

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

Jerome A. Cohen (Appellant) appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1 and 8, which are the only pending claims. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

The Invention

Appellant's claimed invention is directed to a device for rotatably and releasably coupling adjacent foundation forms together to facilitate fabrication of angled or curved poured foundation walls. Specification, paras. [0002], [0004], and [0005]. According to Appellant, T-shaped slots in the device allow first and second connecting members to be slidably attached to foundation forms via pre-installed fasteners projecting outwardly from the foundation forms. Specification, para. [0008].

Claim 1, reproduced below, is representative of the claimed subject matter.

1. An apparatus for making foundation walls having angled or arcuate contours comprising:

first and second connecting members, each defining at least one joining portion, each of said first and second connecting members defining a channel for slidably receiving an end of a foundation form being couplable to an end of a foundation form so that when said forms are operably positioned adjacent to one another said joining portions defined by each of said connecting members interlock with one another;

each of said first and second connecting members defining a plurality of T-shaped slots to allow said first and second connecting members to be slidably attached to said foundation forms via pre-installed fasteners projecting outwardly from said foundation forms, each of said T-shaped slots

extending completely through at least one surface of said first and second connecting members;

each joining portion defines a shaped passage extending there through, said shaped passage[s] being substantially coaxial with one another when said first and second connecting members are operably positioned:

an elongated coupling member defining an exterior shape complimentary to a shape defined by said shaped passages is slidably received in said shaped passages thereby rotatably and releasably joining said first and second connecting members and thereby said foundation forms together.

The Rejections

Appellant seeks review of the Examiner's rejections of claims 1 and 8 under 35 U.S.C. § 103(a) as being unpatentable over Nyman (US 3,153,807, issued Oct. 27, 1964) and Wegman (US D493,351 S, issued Jul. 27, 2004) and as unpatentable over Schmaltz (US 3,825,220, issued Jul. 23, 1974) and Wegman.

SUMMARY OF DECISION

We REVERSE.

ISSUE

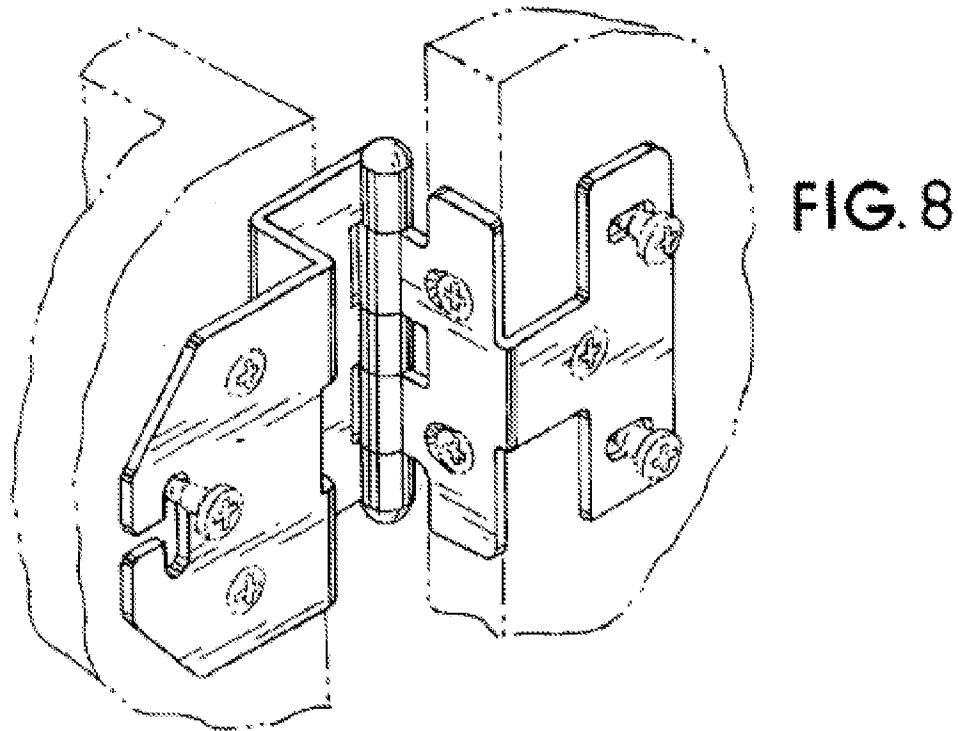
At issue in this appeal is whether Appellant demonstrates the Examiner's rejections lack articulated reasoning with rational underpinning to support the conclusion that it would have been obvious to provide a plurality of T-shaped slots on each of the hinge portions 1a and 1b of Nyman or on each of the halves 12 and 14 of Schmaltz's joint assembly in view of the design patent to Wegman.

DISCUSSION

Nyman discloses a hinge intended especially for collapsible racks of the type used when small parcels or unpacked articles are to be transported on loading pallets. Nyman, col. 1, ll. 7-10. Nyman's two connecting members (portions 1a, 1b) are rotatably joined. Nyman, col. 1, ll. 61-63. Nyman discloses a plurality of round holes 7 in each side wall 2, 3 of each portion intended for rivets to connect the side walls 14 of the pallet racks to the hinge portions. Nyman, col. 2, ll. 1-3; drawing figure. Nyman's hinge portions 1a, 1b lack a plurality of T-shaped slots, as called for in claim 1, as well as in claim 8, which depends from claim 1.

Schmaltz discloses a concrete form work joint assembly comprising a male half 12 and a female half 14. Schmaltz, col. 2, ll. 12-13. Each joint half comprises attachment portions 26, 28 provided with circular holes for receiving fasteners, such as screws, for securing outer form plates 16, 16 or inner form plates 18, 18. Schmaltz, col. 2, ll. 23-24 and 32-34; Figures 1-3. Schmaltz's joint halves lack T-shaped slots, as called for in claim 1, as well as in claim 8, which depends from claim 1.

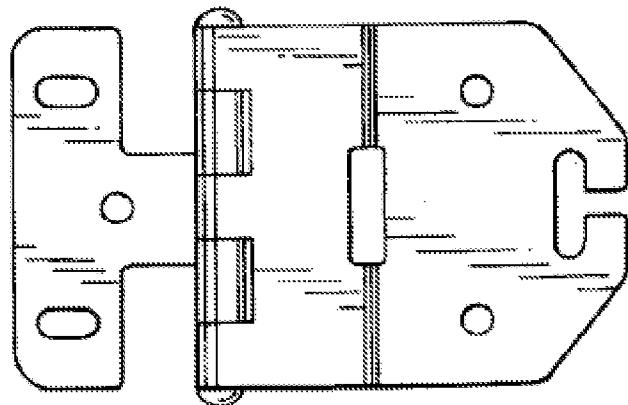
Wegman is a design patent for a cabinet hinge. Wegman's Figure 8 is reproduced below:



Wegman's Figure 8 depicts an elevational perspective view of a cabinet hinge design in an open configuration, with the associated screws and portions of the connected cabinet and cabinet door being shown in phantom.

Wegman's Figure 14 is reproduced below:

FIG. 14



Wegman's Figure 14 depicts a back elevational view of the hinge design shown in Figure 8.

Wegman's Figure 8 shows only one T-shaped slot on one half of the hinge. The only other openings provided in the half of the hinge provided with the T-shaped slot are round openings, as illustrated in Wegman's Figure 14. Wegman's Figures 8 and 14 show only elongated openings and a circular opening in the other half of the hinge. Therefore, Wegman discloses a hinge having two hinge portions, wherein only one of the hinge portions is provided with one T-shaped slot. Wegman does not teach a hinge wherein each hinge portion is provided with a plurality of T-shaped slots.

In rejecting claims 1 and 8, the Examiner contends that it would have been obvious to provide the side walls 2, 3 of Nyman's hinge portions with T-shaped slots in place of openings 7, "thus allowing a maneuverable attachment of the Nyman hinge to the boards 14, (particularly a board possessing a preinstalled fastener)." Answer 4. Likewise, the Examiner contends that it would have been obvious to provide the attachment portions 26, 28 of Schmaltz with T-shaped slots in place of the circular apertures shown in Figures 1-3 of Schmaltz, "thus allowing a maneuverable attachment of the Schmaltz hinge to the form boards 16, (particularly a board possessing a preinstalled fastener)." Answer 5. According to the Examiner, "Wegman's teaching of a T-shaped slot would apply to any and all apertures 7 of Nyman," and a person of ordinary skill would realize that "any or all of the apertures 7 of Nyman may be formed as a T-shape" to allow for "maneuverable sliding" of the side walls 14. Answer 7.

Appellant correctly points out that Wegman teaches only a single T-shaped slot on only one of the hinge portions. Appeal Br. 7. Thus,

according to Appellant, Wegman fails to disclose, teach, or suggest the limitations of claim 1 conceded by the Examiner to be lacking in Nyman and Schmaltz. *Id.*

In rejecting claims as unpatentable on the basis of obviousness, the Examiner must provide some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR Int'l. Co. v. Teleflex Inc.*, 550 US. 398, ___, 127 S. Ct. 1727, 1741 (2007). Moreover, rejections based on 35 U.S.C. § 103 must rest on a factual basis. In making such a rejection, the examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967).

Nyman, Schmaltz, and Wegman provide no support for the Examiner's proffered rationale that it would have been obvious to form any or all of the apertures or openings of Nyman or Schmaltz as a T-shape to allow for maneuverable sliding. Nor does any of Nyman, Schmaltz, and Wegman teach providing a plurality of pre-installed fasteners on the side walls, form plates, or cabinet components for maneuverable sliding receipt in a plurality of T-shaped slots. In the record before us, the only teaching of providing the foundation forms with a plurality of pre-installed fasteners to be slidingly accommodated in a plurality of T-shaped slots during assembly of the foundation forms is found in the disclosure of Appellant's invention in the Specification and claims of the present application. We find in Wegman's disclosure of a single T-shaped slot in one of the two hinge portions of Wegman's cabinet hinge no hint whatsoever that provision of

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more than one such T-shaped slot on either portion of the cabinet hinge would even be desirable. Accordingly, the Examiner's articulated reasoning for the proposed modification of either Nyman or Schmaltz to provide a plurality of T-shaped slots on each hinge portion or joint half ostensibly is grounded on speculation, unfounded assumptions, or hindsight reconstruction, rather than rational underpinning factually supported by the record. Consequently, we cannot sustain the rejections.

CONCLUSION OF LAW

Appellant demonstrates the Examiner's rejections lack articulated reasoning with rational underpinning to support the conclusion that it would have been obvious to provide a plurality of T-shaped slots on each of the hinge portions *1a* and *1b* of Nyman or on each of the halves 12 and 14 of Schmaltz's joint assembly in view of the design patent to Wegman.

DECISION

The Examiner's decision is:

REVERSED

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